

LAW OFFICES

POTTER ANDERSON & CORROON

DELAWARE TRUST BUILDING  
WILMINGTON, DELAWARE 19801

WILLIAM S. POTTER  
DAVID F. ANDERSON  
WILLIAM POOLE  
RICHARD F. CORROON  
JOHN P. SINCLAIR  
BLAINE T. PHILLIPS  
JOSEPH H. FOGHEGAN  
HUGH CORROON  
RICHARD L. McMAHON  
CHARLES S. CROMPTON, JR.  
E. D. GRIFFENBERG, JR.  
ROBERT K. PAYSON  
LEONARD S. TOGMAN  
H. STANLEY LYNCH  
RICHARD E. POOLE  
MICHAEL D. GOLDMAN  
VANCE A. FUNK III  
JAMES F. BURNETT  
PETER M. SIEGLAFF  
DAVID A. ANDERSON

CLARENCE A. SOUTHERLAND  
COUNSEL

TELEPHONE  
658-6771  
AREA CODE 302

CABLE ADDRESS  
WARDGRAY

January 12, 1972

Mr. Eugene R. Perry  
400 Foulk Road  
Wilmington, Delaware 19803

Mr. John V. Ingham  
121 Broadbent Road  
Northminster  
Wilmington, Delaware

Re: Land Redevelopment Reply to  
Affirmative Statements of  
County Attorney

Gentlemen:

Today we received a copy of Mr. Uffelman's letter of January 11, 1972. Since we have stated our basic contentions in the letter of December 30, 1971, we will not comment further on Mr. Uffelman's answers to these contentions. A brief comment on the County's affirmative position (paragraphs 1-3, page 3 and 4 of the Uffelman letter of January 11, 1972) is in order.

1. Whether or not the material deposited in the landfill was compacted when delivered to the site is immaterial under the contract. There is no evidence in the record that the state of compaction was ever considered or discussed, and certainly the contract is silent on this. Furthermore, the statement that 90% of the pick up truck loads as compacted would be less than 2 cubic yards is based on someone's unsupported guess and is not supported by any reliable testimony. (Cf. White testimony, Tr. 691ff)

\* White's figure is 75% and not 90% (Tr. 692)

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2. The issue of cost of recovering the blowing paper has been covered in paragraph 11 of my letter of December 30, 1971. Suffice it to say, that the County does not want to be bound by the literal terms of paragraph 5(a) of the contract (and certain other terms), but wants to hold Ward to the literal terms of paragraph 11 of the contract in spite of the County's insistence on keeping the landfill open when wind conditions were such that nothing short of a covered dome could have kept the papers from blowing.

3. The testimony will show that it is not true that Ward has refused to move Pond 4. It was drained and has not been in operation since about October 29, 1971 (Ward Tr. 117, 829; Olson Tr. 825), although final grading has not been completed. There is no substantial testimony that "water soaked gravel" is stored on top of the landfill. The County's testimony on this point is general, unsupported and "fuzzy". The strongest testimony of the County amounts to nothing more than that gravel which was somewhat moist was stored on top of the landfill. The testimony of the Ward Witnesses was that the amount of water which was held in suspension by the washed sand or gravel was minimal (Ward Tr. 371).

In the time available since receiving Mr. Uffelman's letter of January 11, it has been impossible to read the entire record for the purpose of refreshing our recollection on the testimony about the scale house. As we recall it, however, nowhere in the testimony is there anything more than a passing reference to the scale house as creating a problem about which the County was never consulted. The fact of the matter is that at one point the parties were in negotiation in respect to the possible relocation of the scale house to give the County more room when the capacity of the landfill was nearly exhausted.

Very truly yours,

*William Poole* 028309

William Poole

WF:G  
cc: William H. Uffelman, Esq.

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